

Title	Small Claims: Time for Scheduled Hearing (Amend Code Civ. Proc., §116.330)
Summary	The committee is proposing that the Judicial Council sponsor legislation to amend Code of Civil Procedure section 116.330. The code's three time periods for scheduling a small claims hearing would be replaced by a single provision that all small claims hearings must be scheduled at least 30 days but not more than 70 days from the date the order to appear is issued. This change would (1) give the plaintiff a wider range of possible hearing dates and more time to serve the order to appear on the defendant, (2) reduce requests for continuances, and (3) save the courts processing time and costs.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, 415-865-7669, cara.vonk@jud.ca.gov
Discussion	<p>Currently, Code of Civil Procedure section 116.330 provides three sets of minimum and maximum time-periods for scheduling a small claims hearing. The appropriate time frame for the hearing depends on whether the defendant is (1) a county resident, (2) an out-of-county resident, or (3) a public entity. These three sets of times complicate small claims processing costs through the need for more clerks or programming of automated systems. The small window within which a small claims hearing must be scheduled and the order to appear must be served on the defendant limits the range of available hearing dates—including small claims night court in courts that have it—with the result that there may be frequent requests for continuances. The processing of continuances also increases small claims court costs.</p> <p>The use of just one time frame for setting a hearing would reduce the complexity of scheduling small claims hearing dates. Less staff time would be required because the court clerk would no longer have to scrutinize each case in order to set the hearing in the appropriate time frame. All cases could be processed and scheduled quickly within the single time frame, thereby reducing court costs. Computer programming for automated scheduling systems would also be less complicated and less costly.</p> <p>Increasing the range of hearing dates to 41 days—from 30 to 70 days after the complaint is filed—could also be more convenient for the plaintiff, who could take into account the anticipated time needed to</p>

serve the defendant. Currently, a defendant who resides within the county must be served at least 15 days before the hearing, and a defendant who resides outside the county must be served at least 20 days before the hearing. (Code Civ. Proc., § 116.340(b).) If the minimum time for scheduling the hearings is selected under the current statutory procedure (15 days for an in-county and 20 days for an out-of-county defendant), the defendant must be served with the order to appear on the same day the claim is filed.

The proposed uniform range for scheduling a hearing would appear to be more realistic and convenient for the plaintiff. It should result in fewer requests for small claims hearing date continuances, which also would also save court time and costs.

The proposed range for setting the hearing in all small claims cases would be consistent with the trial court delay reduction disposition goals that encourage the disposal of 90 percent of all small claims cases within 70 days after filing and 100 percent within 90 days after filing. (See Stds. Jud. Admin., § 2.3(c).)

The committee is especially interested in receiving comments on the proposed range of time for scheduling the hearing, including whether a longer time—such as at least 45 days but not more than 90 days—or a shorter time would be more appropriate than the suggested “at least 30 days but not more than 70 days from the date of the order.”

The text of the proposed amendment follows.

Attachment

Code of Civil Procedure section 116.330 would be amended to read:

116.330. Filing of Claim Form—Order to Appear—Hearing Date.

- (a) When a claim is filed, the clerk shall schedule the case for hearing ~~in accordance with subdivision (e)~~ and shall issue an order directing the parties to appear at the time set for the hearing with witnesses and documents to prove their claim or defense. The case shall be scheduled for hearing at least 30 days but not more than 70 days from the date of the order.
- (b) In lieu of the method of setting the case for hearing described in subdivision (a), at the time a claim is filed the clerk may do all of the following:
- (1) Cause a copy of the claim to be mailed to the defendant by any form of mail providing for a return receipt.
 - (2) On receipt of proof that the claim was served as provided in paragraph (1), issue an order scheduling the case for hearing in accordance with subdivision ~~(e)~~ (a) and directing the parties to appear at the time set for the hearing with witnesses and documents to prove their claim or defense.
 - (3) Cause a copy of the order setting the case for hearing and directing the parties to appear, to be served upon the parties by any form of mail providing for a return receipt.
- ~~(c) If the defendant resides in the county in which the action is filed, the case shall be scheduled for hearing at least 15 days but not more than 40 days from the date of the order. If the defendant resides outside the county in which the action is filed, the case shall be scheduled for hearing at least 30 days but not more than 70 days from the date of the order.~~
- ~~(d) If there are two or more defendants and one or more of them resides outside the county in which the action is filed, the date for the appearance of all the defendants shall be at least 30 days but not more than 70 days from the date of the order.~~
- ~~(e) A public entity, as defined in Section 811.2 of the Government Code, which files more than 10 claims at one time may request a date for the appearance of the defendant later than that otherwise specified in this section, and the clerk may set the case for hearing at that later date subject to the following limits:~~

- 39 (1) ~~If all defendants reside in the county in which the action is filed, the~~
40 ~~date for appearance shall not be more than 70 days from the date of~~
41 ~~the order.~~
42 (2) ~~In other cases, the date for appearance shall not be more than 90 days~~
43 ~~from the date of the order.~~